Ontario Rental Housing Tribunal

Annual Report
2001-2002

Ontario

106-03416/

Minister of Municipal Affairs and Housing

Minister Responsible for Seniors

777 Bay Street, 17th Floor
Toronto ON M5G 2E5
Tel. (416) 585-7000 Tél.
Fax (416) 585-6470
www.mah.gov.on.ca

Ministre des Affaires municipales et du Logement

Ministre délégué aux Affaires des personnes âgées

777, rue Bay, 17e étage
Toronto ON M5G 2E5
(416) 585-7000
Téléc (416) 585-6470
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Ontario

TO THE LIEUTENANT GOVERNOR
OF THE PROVINCE OF ONTARIO

MAY IT PLEASE YOUR HONOUR:

For the information of Your Honour and the Legislative Assembly, we have the privilege of presenting the Annual Report of the Ontario Rental Housing Tribunal for the 2001-2002 fiscal year.

Respectfully submitted,

Hon. John Gerretsen
Minister of Municipal Affairs

Ontario Rental Housing Tribunal

Office of the Chair

777 Bay Street, 12th Floor
Toronto ON M5G 2E5
Telephone: (416) 585-7295
Facsimile: (416) 585-6363

Tribunal du logement de l'Ontario

Bureau du Président

777 rue Bay, 12e étage
Toronto ON M5G 2E5
Téléphone: (416) 585-7295
Télécopieur: (416) 585-6363

Ontario

TO THE HONOURABLE JOHN GERRETSEN
MINISTER OF MUNICIPAL AFFAIRS

MINISTER:

I have the honour to submit the Ontario Rental Housing Tribunal's Annual Report for the 2001-2002 fiscal year.

Respectfully submitted,

Chisanga Puta-Chekwe
Chair
Ontario Rental Housing Tribunal

Ontario Rental Housing Tribunal

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Toronto, Ontario M5G 2E5
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Chair's Message

This is the fourth Annual Report of the Ontario Rental Housing Tribunal. Our Annual Reports coincide with the government's fiscal year; therefore, this Report will cover the period from April 1, 2001 to March 31, 2002.

Our fourth year of operation has been an excellent one for the Tribunal. We have implemented our call centre and it has exceeded our expectations in providing timely as well as excellent customer service to our clients. This year alone, the virtual call centre won the Public Sector Quality Fair Award, Gold Level and the Showcase Ontario Award of Excellence.

In general, the Tribunal continues to achieve high marks for its streamlined and efficient administration. During this year, the Tribunal was awarded the Capam Award for Innovation in Government and a Showcase Ontario Award of Excellence for the Teleform System. These administrative efficiencies provide both the Tribunal members and its clients, an atmosphere where sound and thoughtful decision-making can flourish and we applaud our staff for their dedication and commitment.

The Tribunal mediators have completed an extensive two-level training program in rights-based mediation and have been enthusiastic about this opportunity and its benefits. Mediation continues to be an integral part of the Tribunal's work with both of our stakeholder groups finding it to be a viable alternative to traditional adjudication.

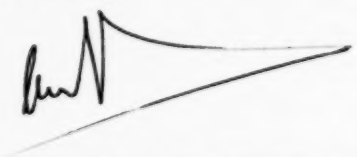
Members have been active in training sessions both in-house and externally through the Society of Ontario Adjudicators and Regulators. All members have been trained thoroughly on the changes to the *Tenant Protection Act* contained in Bill 119.

The Tribunal continues to operate without a significant backlog of cases. At no time during this fiscal year has the number of outstanding applications exceeded the number of applications received per month. We owe these excellent results to the dedication of our adjudicators and staff.

The TELE*form* version of Tribunal forms has been quite successful and has reduced the waiting time of our clients by about 80%. It is also proving to be an excellent tool in improving the accuracy of our data entry.

Above guideline increase applications continue to be a challenge. We have seen considerable progress over the year, but the resolution of these applications, which constitute only 1 per cent of the workload, but take up 16 per cent of our time, is still not as efficient as we would like it to be. We are, however, increasingly successful in resolving these cases by way of mediation. We are hopeful that the strategy of using both adjudication and mediation to resolve these applications will lead to a significant shortening of case resolution timelines.

Sincerely,



Chisanga Puta-Chekwe, Chair
Ontario Rental Housing Tribunal

THE TENANT PROTECTION ACT

The *Tenant Protection Act, 1997,* (TPA), was proclaimed on June 17, 1998.

The four primary objectives of the TPA are:

- To simplify the relationship between landlords and tenants
- To balance the needs of landlords and tenants
- To create an efficient process that deals with disputes quickly
- To create a cost-efficient process

The *Tenant Protection Act* provides a one-window service to landlords and tenants and offers a timely method for the resolution of disputes between landlords and tenants.

During this fiscal year, the TPA was amended by the *Red Tape Reduction Act*. Many of the amendments clarify existing rules and have little impact on our clients. For example, one of the amendments clarifies that a person who shares a unit with a tenant and pays that tenant rent, and who is not recognized by the landlord as a tenant, is not a subtenant as defined in the legislation. There are, however, some new rights recognized in this amending legislation.

New Rights for Tenants

Tenants are now able to apply for costs incurred as a result of being illegally locked out of an apartment. They are also able to apply for an order requiring their landlord to let that tenant back into their unit after being locked out illegally. As well, tenants who have received an eviction order due to nonpayment of rent, and who have paid the amounts required to void the order to the landlord are able to apply for an order confirming that these amounts have been paid.

New Rights for Landlords

Where a tenant is involved in certain types of illegal drug activity, the landlord is now able to give them a termination notice with shorter time frames, allowing for the application to be processed more quickly. As well, a landlord who owns four or more condominium units is now able to give a termination notice for purchaser's own use.

THE ROLE OF THE ONTARIO RENTAL HOUSING TRIBUNAL

The role of the Tribunal is to:

- Resolve tenant and landlord disputes through either adjudication or mediation
- Determine legal above guideline rent increases with respect to residential units
- Provide landlords and tenants with information about their rights and obligations

The Tribunal focuses solely on residential rental accommodation issues and offers a process that is more efficient than previous systems for resolving landlord and tenant matters.

The Adjudication Process

The Tribunal was designed to create a more informal environment for the resolution of disputes between landlords and tenants. Under the adjudication process:

- Disputes are heard in public buildings rather than courtrooms
- Tenants may choose to represent themselves and may consult an on-site legal aid representative
- The more conciliatory approach of mediation is encouraged before the hearing process begins or during the hearing if the adjudicator feels that the matter lends itself to mediation
- The Tribunal's adjudicators are highly qualified professionals who have both the experience and the knowledge to deal quickly and fairly with the issues. Adjudicators are appointed to the Tribunal after undergoing a rigorous and competitive interview and selection process.

Adjudicators from across the province meet formally twice a year to discuss issues. They also meet more frequently and informally in their regions. Many of them sit on committees and working groups such as the Rules and Guidelines Committee, groups

to review the format of orders and other groups that gather opinions on specific issues. Members' meetings also contain elements of training such as conduct of a hearing, natural justice, amendments to the TPA and to other relevant legislation such as the *Statutory Powers Procedure Act.*

The Mediation Process

Mediation is offered under the Tribunal's legislation. It is often used to clarify issues and reduce areas of dispute so that the hearing may proceed more expeditiously. Mediated settlements are more flexible in their content than Tribunal orders. This often assists parties in reaching a satisfactory conclusion to their difficulties. Mediators use both their knowledge of rent regulation and their negotiation skills to assist landlords and tenants in resolving their applications and their concerns.

During the fiscal year of 2001/2002, approximately 13% of the Tribunal's applications were successfully mediated. More difficult to quantify is the benefit of resolving only some of the issues in an application. Although these applications still have to be heard, the hearing takes a much shorter time because many of the issues have already been resolved through mediation. We are trying to focus our mediation on the more complex applications. Many tenant applications benefit greatly from mediation and we concentrate much of our resources on these. We have had success in mediating Above Guideline Increase applications, which saves all parties lengthy hearings and provides a quicker resolution of the issues. We will be pursuing this resolution option more frequently in the coming year.

Locations

The Ontario Rental Housing Tribunal has eight regional offices and nine client service offices across the province. Most of the Tribunal's hearings are held in its regional offices.

Hearings are held in the areas that are most convenient for tenants and landlords.

The regional offices are located in the following areas:

- London
- Hamilton
- Mississauga
- Toronto South (Downtown)
- Toronto North (North York)
- Toronto East (Scarborough)
- Ottawa
- Sudbury

At client service offices, landlords and tenants can file applications, have their questions answered by a customer service representative, and attend hearings (when it is convenient for both parties to do so). The client service offices are located in the following areas:

- → Windsor
- → Kingston
- → Durham/Whitby
- → Thunder Bay
- → Peterborough
- → Kitchener

Two of our offices are co-located with Government Information Centres where clients can speak with a customer service representative and file applications. These offices are:

- → St. Catharines
- → Barrie

The Tribunal has a network of filing centres across the province where tenants or landlords can file their applications and pick up information about the Tribunal. These filing centres are currently run by private issuers who handle other government documents in more remote areas of the province. We will be joining with the Government Information Centres across Ontario to provide access across the province in the coming fiscal year.

Call Centre

The Tribunal has a virtual call centre for handling customer inquiries. There is a toll-free number for callers who live outside Toronto (1-888-332-3234); and, in the Greater Toronto area the number is 416-645-8080. Customer service representatives are available during normal business hours. An extensive telephone script answers frequently asked questions. This year, the Tribunal responded to approximately 750,000 telephone calls. After hours and on weekends, a toll-free number is also available for faxing time sensitive documents and for ordering any of the Tribunal's public education brochures. These brochures are available in English and French. Selected brochures on the most important topics are available in seven other languages: Portuguese, Italian, Chinese, Punjabi, Polish, Tamil and Spanish.

The Tribunal's website (orht.gov.on.ca) is visited almost one million times each month. Clients can find information about the progress of their application, the date of the hearing and whether an order has been issued. As well, all Tribunal forms are available on the website as well as through each regional and client service office.

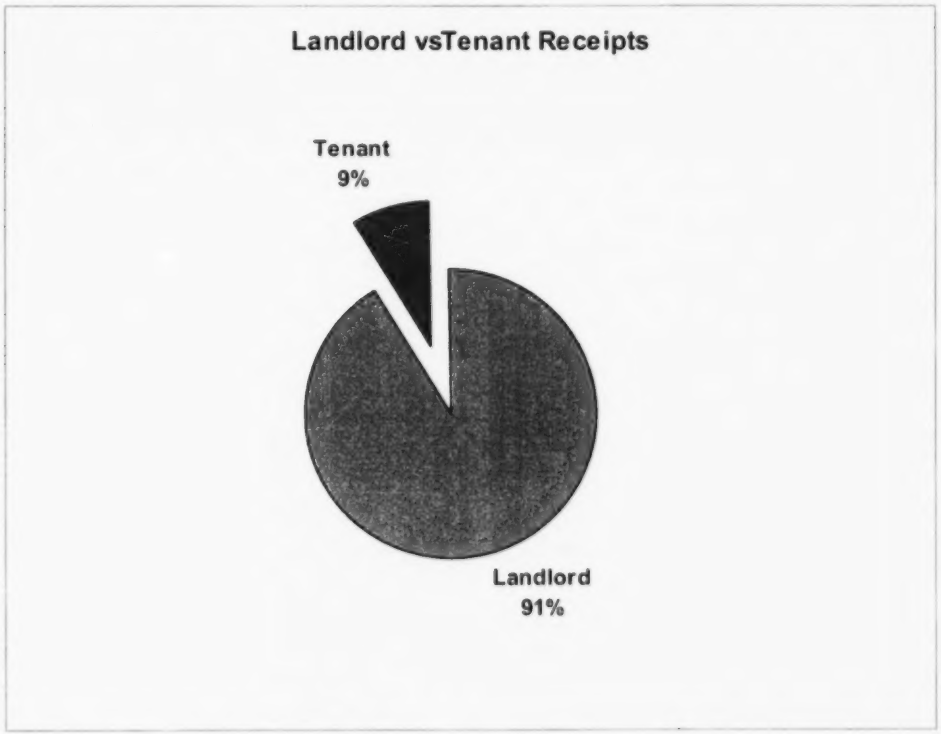
The Tribunal plans to develop an Internet application to allow clients to file applications electronically.

Statistical Information for the Fiscal Year 2001-2002

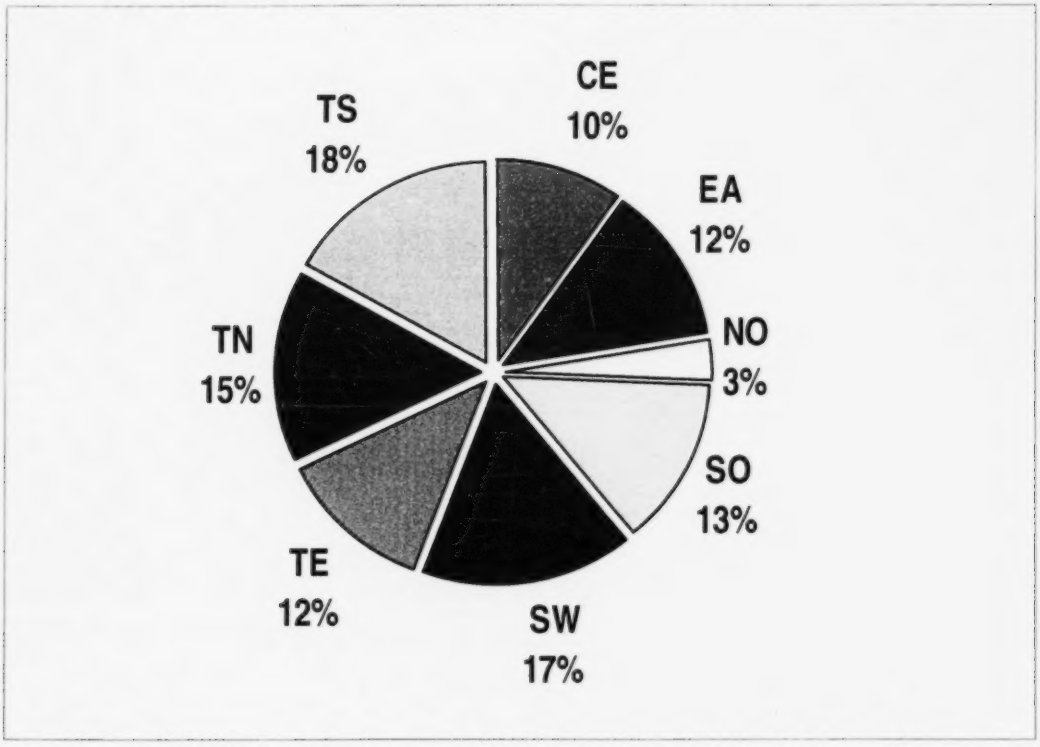
Applications

During the 2001-2002 fiscal year, the Tribunal received 77,104 applications and resolved 78,285. (Because the Tribunal resolves re-opened mediation and set-asides, some applications may generate more than one resolution.) At the end of the fiscal year, 4,992 applications were still in progress.

The distribution of the receipts for the 2001-2002 fiscal year remains unchanged since the last fiscal period and are reflected in the following profile:



The regional distribution of applications is as follows:



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Eviction applications have been in the majority since the Tribunal began in 1998. This year, the trend has continued. Of the total applications received by the Tribunal, 69.5 per cent were for termination of tenancies because of arrears of rent. This is down from 71.40 per cent last year and down even further from 72.63 per cent the year before. Tenant applications accounted for 8.54 per cent of the applications filed during this fiscal year. This is up from 7.10 per cent last year.

Above Guideline Increase Applications

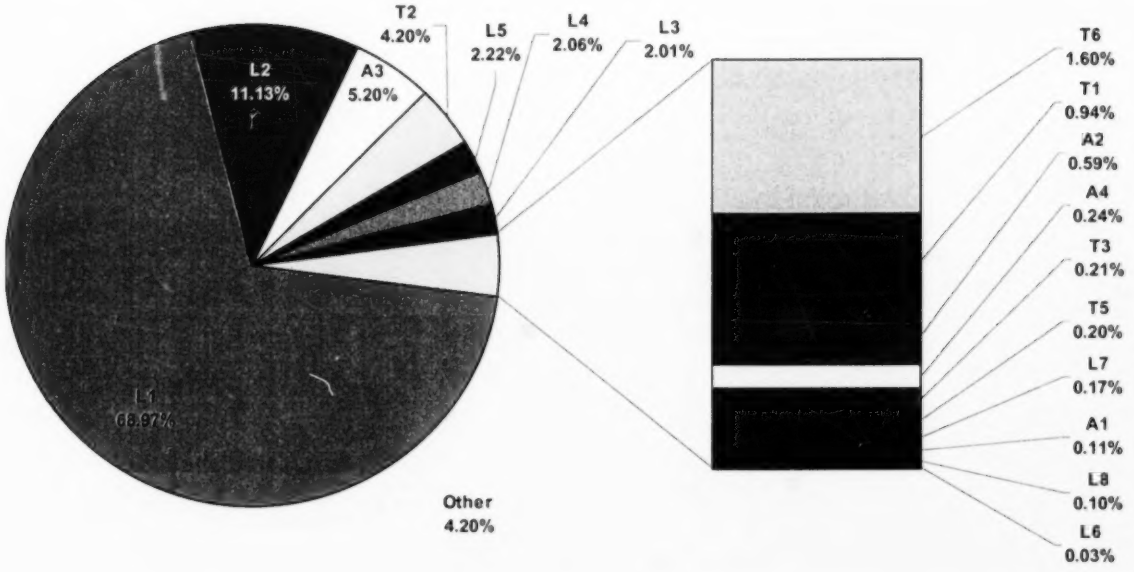
An average of 251 applications for above guideline increases were received each year under the *Rent Control Act*. During the first year of Tribunal operations, 887 applications for above guideline increase were received. In the fiscal year 2000/01, 608 above guideline increase applications were received. During this year, 1,608 applications were received.

These applications continue to take a disproportionate amount of time both for adjudicators and staff. A study of the Tribunal's workload found that these applications which make up only one per cent of the Tribunal's workload, take 16 per cent of the Tribunal's time.

Mediation is helping us with this workload, although we continue to look for other ways to increase our efficiency and speed up the resolution process.

The charts on the following two pages show the distribution of the Tribunal's workload, by type of application and disposition method (default or hearing), as well as a distribution of application type by hearing time.

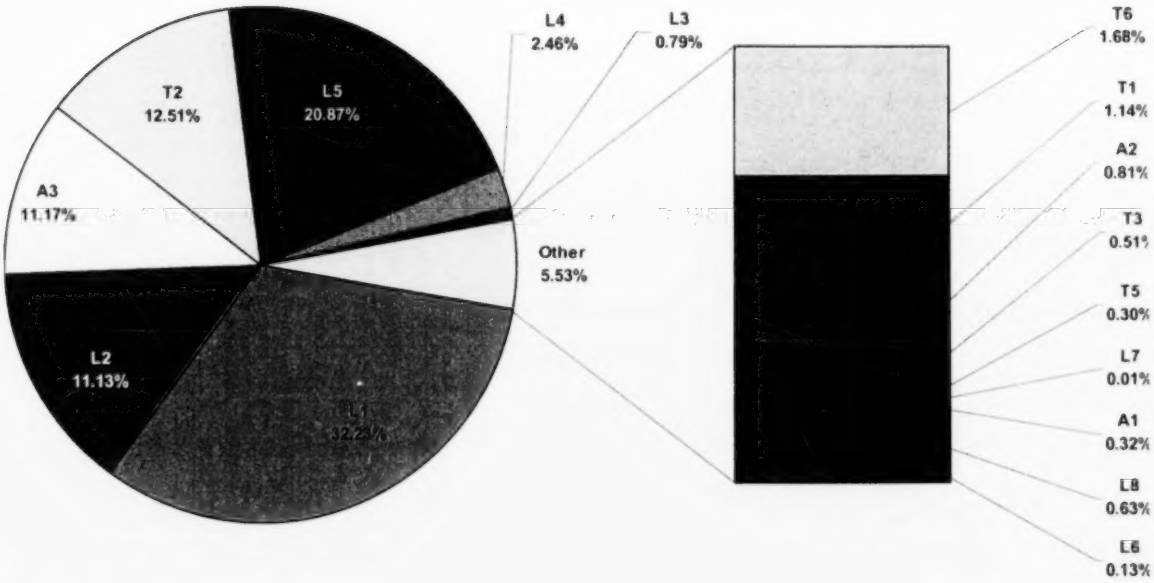
WORKLOAD FOR FISCAL 2001-2002
DISTRIBUTION OF APPLICATION RECEIPTS



Case Type		# Cases	#Defaults	#Hearings
L1	Termination and Non-Payment of Rent	49,590	29,358	16,807
L2	Terminate Tenancy & Evict	8,006	1,811	5,023
A3	Combined Application	3,740	669	2,589
T2	Tenant Rights	3,017	0	2,174
L5	Rent Increase above Guideline	1,599	1	907
L4	Terminate Tenancy: Failed Settlement	1,482	1,281	571
L3	L3 - Term, Tenant gave Notice	1,447	1,280	410
L6	Maintenance	1,153	0	875
T1	Rebate	677	57	396
A2	Sublet or Assignment	427	99	281
A4	Vary Rent Reduction Amount	174	0	17
T3	Rent Reduction	152	0	89
T5	Bad faith Notice of Termination	147	0	104
L7	Transfer Tenant to Care Home	120	0	1
A1	Determine Whether Act Applies	78	0	56
L8	Tenant Changed Locks	73	0	55
L6	Review of Pro. Work Order	22	0	23
		71,904	**34,556**	**30,378**

WORKLOAD FOR FISCAL 2001-2002

DISTRIBUTION OF HEARING TIME



Case Type		# Cases	#Defaults	#Hearings	Time/Hear (mins.)	Hear.Time (mins)
L1	Termination and Non-Payment of Rent	49590	29358	16807	20	336140
L2	Terminate Tenancy & Evict	8006	1811	5023	30	150690
A3	Combined Application	3740	669	2589	45	116505
T2	Tenant Rights	3017	0	2174	60	130440
L5	Rent Increase above Guideline	1599	1	907	240	217680
L4	Terminate Tenancy: Failed Settlement	1482	1281	571	45	25695
L3	L3 - Term. Tenant gave Notice	1447	1280	410	20	8200
T6	Maintenance	1153	0	875	20	17500
T1	Rebate	677	57	396	30	11880
A2	Sublet or Assignment	427	99	281	30	8430
A4	Vary Rent Reduction Amount	174	0	17	0	0
T3	Rent Reduction	152	0	89	60	5340
T5	Bad faith Notice of Termination	147	0	104	30	3120
L7	Transfer Tenant to Care Home	120	0	1	60	60
A1	Determine Whether Act Applies	78	0	56	60	3360
L8	Tenant Changed Locks	73	0	55	120	6600
L6	Review of Prov. Work Order	22	0	23	60	1380
		71,904	**34,556**	**30,378**		**1,043.020**

WORKLOAD FOR FISCAL 2001-2002
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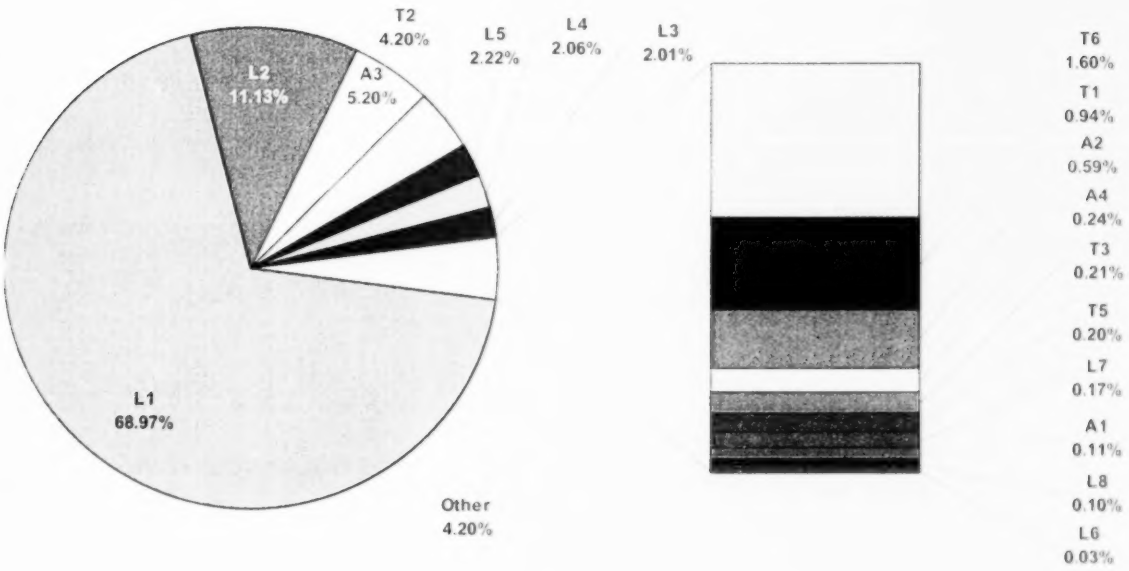

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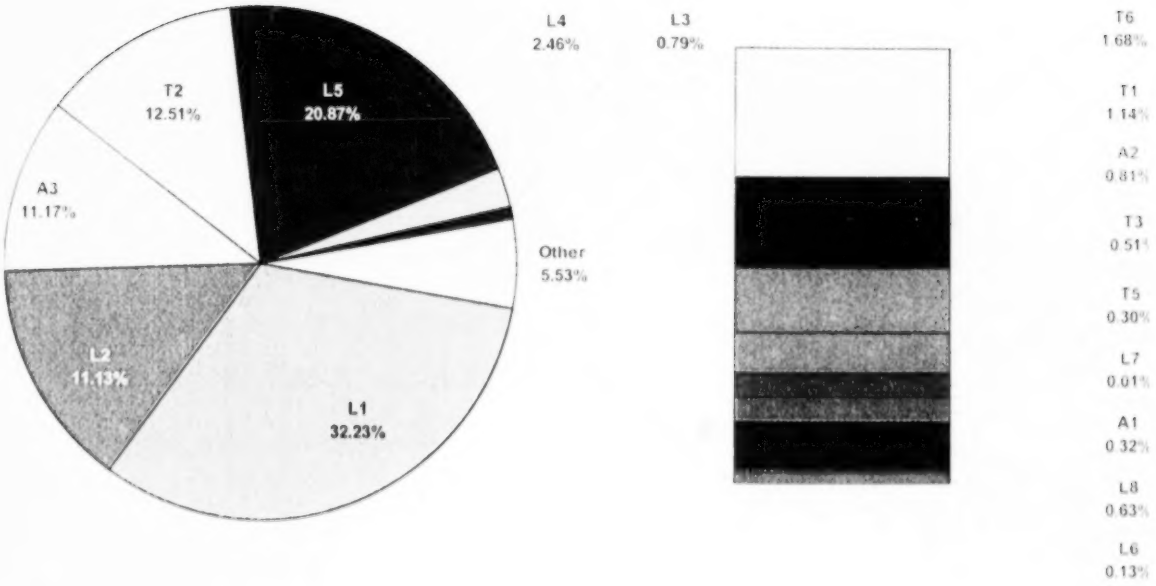
WORKLOAD FOR FISCAL 2001-2002

DISTRIBUTION OF HEARING TIME



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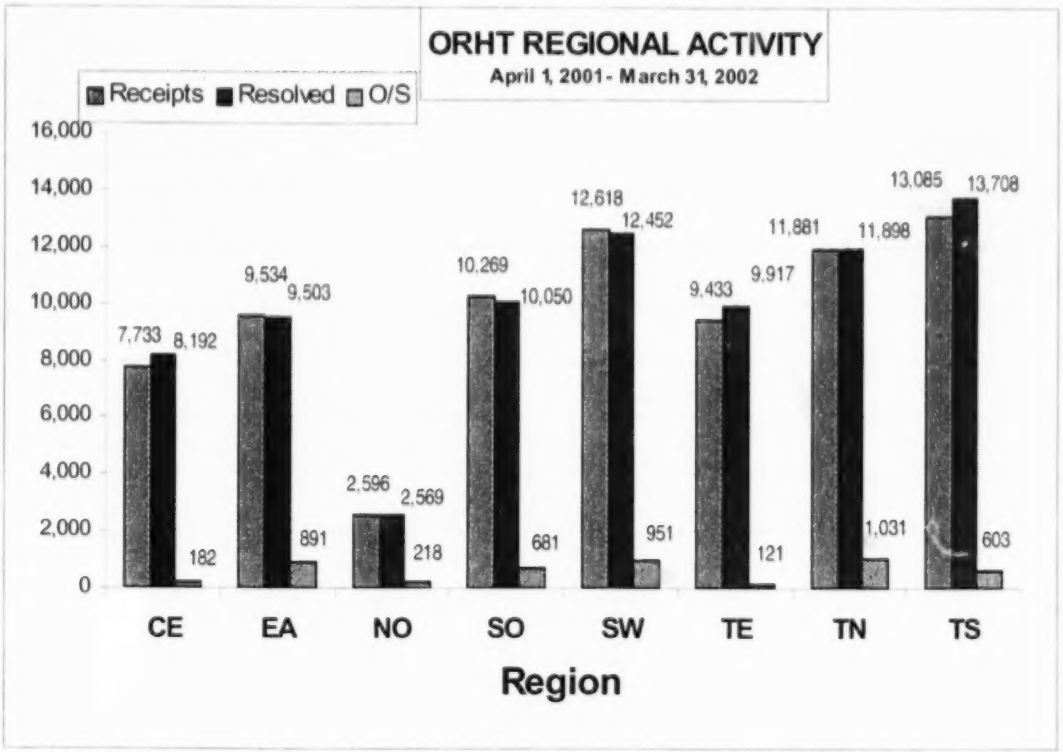
Harassment Applications

Tenants may apply to the Tribunal for relief, at no charge, if they believe that their landlord is harassing them. The Tribunal received 3,073 applications relating to tenants rights as compared to 2,788 during the last fiscal year. Of the number received, 2,830 have been resolved, leaving 243 unresolved by the end of the fiscal year.

APPLICATION RESOLUTION

The Tribunal has been successful in resolving applications quickly. On average, the Tribunal maintains only one month's receipts as open files. Most orders are issued within 20 days of filing the application and even more complex orders were issued within 25 days.

The chart below indicates that receipts and resolutions remained constant during the year.



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ORDER SUMMARIES

Landlord Application **EAL-21801** **Section 69**

The landlord filed an application to terminate the tenancy and evict the tenant because the tenant had been persistently late in paying his rent.

The landlord had served the tenant the Notice to Terminate at the End of a Term (Form N8), and the box indicating "You have been persistently late in paying rent" was checked off as the "Reason for this Notice". In the section of the form entitled "Explanation of the Reason", the landlord entered "The tenant is persistently late with his payment of rent".

The member found that the notice given by the landlord did not comply with the requirements of subsection 43(2) of the Act. This subsection states that "if the notice is given by a landlord, it shall also set out the reasons and details respecting the termination". The member found that the landlord merely repeated the "Reasons" for the termination and did not set out any real or effective details. In the member's opinion, the details cannot be interpreted as being the same as the "reasons", otherwise why would the Act have set out the requirement for the landlords to include both in the Notice of Termination.

As a result, the member found that the notice of termination was void. The member also found that this defect was substantive and that the notice did not substantially comply with the requirements of the Act. As a result, the landlord's application was dismissed.

Landlord Application **NOL-05159** **Section 87**

The landlord applied for an order requiring the tenant to pay compensation for damages caused by him or a person he permitted in the residential complex.

The police had attended the tenant's unit with the proper warrants and obtained a key to the unit from the superintendent. Although the key opened the main lock on the door, the police could not enter the unit because there were other locking devices on the door. Since the tenant, who was in the unit, did not unlock the door, the police used a battering ram to gain entry. As a result, the front door of the unit was damaged. Once inside, two other doors were also damaged when the police had to gain entry into the rooms because they also had been locked by the tenant. The cost of repairing the damage was $1,712.00 and the landlord applied to have the tenant compensate him for this amount.

The tenant referred to section 87 of the Act which allows a landlord to apply if the "*tenant or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage...*". The tenant argued that since he did not do the damage and did not permit the police in the complex, the Tribunal had no jurisdiction to make the order that the landlord applied for.

However, the member found that the tenant did "cause" the damage since it was the tenant's installation of the unauthorized locks that led to the damage being done. The member ordered the tenant to pay the costs of repairing the damage.

Landlord Application **TSL-31750** **Section 69**

The landlord applied for an order to terminate the tenancy and evict the tenant because he had committed an illegal act on the premises. The landlord's application was based

on the arrest of the tenant on charges of possession of cocaine, possession of cocaine for the purpose of trafficking, possession of marijuana and possession of the proceeds of crime. At the time of the hearing, the trial on these charges had not yet taken place.

Upon finding out about the charges, the landlord's agent immediately gave the tenant a notice of termination. However, the notice was defective. Another notice of termination on these grounds was given to the tenant five months later.

Based on the evidence of the parties, the member found that the tenant did not know that the baggies found in his unit contained cocaine. The member also found that the cash seized was not the proceeds of crime. As for the charge of possession of marijuana, the tenant did testify that he was in possession of marijuana. On this issue, the member stated that *"although the commission of any illegal act in the unit or the complex is technically a breach of the Tenant Protection Act, it is well established that discretion will be exercised to refuse to grant an eviction order unless the offence has the potential to affect the character of the premises, interfere with the lawful right of the landlord or disturb other tenants".* The member found that there was no evidence that other tenants had been affected or were even aware of the drug use in the unit, and that the offence is not intrinsically dangerous or disruptive. The tenant had engaged in the consumption of small quantities of an illicit drug for medical reasons, without disturbing others. The member further stated that had there been a pressing problem, there would not have been a five month delay in serving a proper notice of termination. Based on this, the member was satisfied that it would not be unfair to refuse to grant the eviction order. The landlord's application was dismissed.

Landlord Application **EAL-22575** **Section 69**

The landlord applied for an order terminating the tenancy and evicting the tenants because the tenants had caused damage to the rental unit and had seriously interfered

with other tenants' reasonable enjoyment of the residential complex or substantially interfered with another lawful right, privilege or interest of the landlord or another tenant. The landlord gave this notice because the tenants had installed a satellite dish antenna without permission.

In the order, the member stated that the landlord has a substantial, lawful right and interest in assuring that any additions or alterations to the rental premises are properly performed and do not compromise the physical integrity of the building itself or present any hazard to any other tenants. Because the satellite dish antenna projected above the roofline, there were potential problems with drainage or snow removal. As well, the bottom of the mast supporting the satellite dish was unanchored and there was evidence to prove that the installation was not sound and could present a danger to people walking below. The member also found that the tenants caused damage to the exterior brickwork when they installed the satellite dish.

As a result, the member found that the tenants interfered with a substantial lawful right, privilege or interest of the landlord. However, the member used his discretion under section 84 of the Act and did not evict the tenants. The member ordered the tenants to remove the antenna system and pay the landlord the estimated cost of repairing the damage. If the tenants failed to comply with these terms, the member included a provision allowing the landlord to make an ex parte application under section 77 of the Act to terminate the tenancy and evict the tenants.

Landlord Application **TNL-26560** **Section 69**

The landlord applied to terminate the tenancy and evict the tenant because he did not pay the rent that he owes. In addition to the rent arrears claimed in the application, the landlord also included an amount to "top up" the last month's rent deposit.

The member found that the tenant was in arrears and ordered the tenant to pay the amount owing, and that the tenancy be terminated and the tenant evicted.

As for the issue of "topping up" the last month's rent deposit, the landlord had argued that the tenant was required by operation of subsection 118(3) of the Act to pay the "top up" amount and this amount fell within the definition of rent set out in section 1 of the Act. Therefore, the landlord argued that if a tenant does not pay this amount, the tenant is in arrears of rent. The member did not agree. The member considered the Tribunal's Interpretation Guideline (No. 11) and agreed with the approach set out. The member stated that not every amount owed by a tenant to a landlord constitutes "rent" within the meaning of the Act. The member stated that, in his opinion, the landlord is entitled to demand payment of the "top up" amount referred to in subsection 118(3) of the Act but, that amount is not rent (at least not until the last month of the tenancy). The member did not include this amount in his determination of the rent arrears.

Tenant Application **TET-02239** **Section 34**

The tenant applied to the Tribunal because the landlord failed to meet the landlord's maintenance obligations under the Act or failed to comply with health, safety, housing or maintenance standards.

In the application, the tenant requested compensation for damage to their car which was caused by the overhead door coming down on the car when the tenant exited the underground parking. The landlord provided evidence showing a diligent inspection regimen with respect to the overhead door and satisfied the member that they promptly and responsibly respond when they discover the need to repair the overhead door.

Based on the evidence of the parties, the member found that the tenant did not prove that the landlord breached their maintenance obligations under section 24 of the Act. The member stated that the proof of a breach under section 24 of the Act is a statutory prerequisite to ordering any remedy under section 34 of the Act. As a result, the tenant's application was dismissed.

Tenant Application **SOT-01952** **Section 7(2)**

The tenant applied for an order determining whether the Act applies.

The tenant had resided in the same park since constructing his home in 1989. The tenant used his home as a permanent year round residence, although the majority of the park was used for seasonal trailers.

The member agreed with the landlord that the rental unit is not a land lease home nor is it located in a land lease community. According to the tenant's evidence, the structure needed only wheels to be moved and was built with the intention of being mobile.

The landlord argued that, as a result of Currie v. Highland Pines Campground Ltd. (a 1996 General Division court decision) in order for the structure to be a "mobile home", it must meet the general requirements established by the Canadian Standards Association. The member did not agree with the landlord's argument. That decision was made under previous legislation (the *Landlord and Tenant Act*) and the definition of "mobile home" was more restrictive than under this Act. As well, in the case before the member, the unit had year round hydro, water and sewage and was the tenant's only permanent residence, which was not the situation that was before the court in Currie et al. The member found that the tenant's dwelling is a mobile home as defined by the Act and that the Act applies.

The landlord requested a review of this order, claiming that there was a serious error. The reviewing member stated that a review is not an opportunity to have an application re-heard in the hope of having a different result from a different member. The Tribunal will not interfere with the proper exercise of discretion and reasonable interpretation and application of law by a member. The reviewing member was not satisfied that there was a serious error in the order or proceedings and, as a result, denied the landlord's request for review.

Tenant Application **TET-01996** **Section 35**

The tenant applied for an order determining that the landlords harassed, threatened or interfered with her, entered her unit illegally, and substantially interfered with the reasonable enjoyment of the rental unit by the tenant or by a member of her household.

The tenant failed to prove that the landlords, who lived in the unit above hers, intentionally made noise in their unit for the purpose of interfering with her reasonable enjoyment. The tenant did however, prove her claim with respect to the landlords entering the unit illegally. On several occasions, the landlords served the tenant with notices that they intended to take measurements in the unit, or carry out needed repairs. Although the landlords did enter the unit to take the measurements, no work was done. The member found that the notices were primarily intended to harass the tenants. The member also found that on another occasion, the initial entry by the landlord was lawful, but it became illegal as a result of the actions of the landlord while in the unit. Additionally, the member found that the landlords or their agent intentionally disrupted cable service to the tenant's unit. The member agreed with the tenant that the landlord's behaviour was threatening and harassing when, in an enraged state, one of the landlords ripped the screen on the storm door in order to serve the tenant with a document.

The member ordered an abatement of $900.00. The tenant was allowed to recover this amount by offsetting the rent for one period ($625.00) and the landlord was ordered to pay the balance of $275.00. The member also stated that the actions of the landlords were deserving of a fine. However, because this issue was not raised at the hearing and the landlords were, therefore, not able to make a submission on it, the member felt it would be procedurally unfair to impose a fine.

Tenant Application **SWT-02965** **Section 35**

The tenant applied for an order determining that the landlord substantially interfered with the reasonable enjoyment of the rental unit by the tenant or by a member of his household.

The tenant complained to the landlord because of a strong chemical odour and irritant which emanated from the neighbour's unit. The neighbour was using a combination of moth balls, bleach and other agents to rid his unit of mice. This resulted in throat problems for the tenant and his children. After attending the hospital, they were advised by the doctor to wear masks when they were in the apartment. The tenant then decided to move from this unit. He rented another unit in the same complex. As a result, the tenant was applying for compensation for the costs associated with this move (moving costs, costs associated with loss of income, and cleaning), increased rent of $70 per month, and damage to his personal property.

Although the member stated that the tenant took prudent and reasonable action by transferring to another unit, the member did not find that the landlord had substantially interfered with the tenant's reasonable enjoyment. The interference was as a result of the actions by the tenant residing next door. The landlord has an obligation to protect tenants from actions of other tenants that substantially interfere with a tenant's

reasonable enjoyment of their unit. However, in this case, the landlord took appropriate action and quickly dealt with this matter by following the steps required under the Act. As a result, the member found that the tenant did not prove that the landlord substantially interfered with the tenant's reasonable enjoyment. The tenant's application was dismissed.

Landlord Application	**CEL-22484**	**Section 69**
Tenant Application	**CET-02477**	**Section 35**

The landlord made an application to terminate the tenancy and the tenant applied for an order determining, among other things, that the landlord had entered the unit illegally and substantially interfered with her reasonable enjoyment of the unit. At the commencement of the hearing, the landlord made a motion that the applications should be dismissed because the Act does not apply to the unit. The landlord was relying on subsection 3(i) of the Act which provides that the Act does not apply with respect to living accommodation whose occupant is required to share a bathroom or kitchen facility with the owner, and the owner lives in the building.

The member found that the portion of the house that the tenant has exclusive possession of consists of a living/bedroom area with kitchen facilities. The bathroom used by the tenant is in a common area outside the area which the tenant can lock. Anyone in the house can use this bathroom. Even though the landlord has a separate bathroom in her exclusive portion of the house, the evidence indicated that the landlord and her guests do occasionally use the bathroom in question. Based on this, the member found that the tenant was required to share a bathroom with the owner and therefore, the Act did not apply. The applications were dismissed.

BIOGRAPHIES

Chisanga Puta-Chekwe

Chair

Chisanga Puta-Chekwe attended Sir William Borlase School in Marlow, Buckinghamshire, before studying law at the University of Birmingham in England. A Rhodes scholar, he received graduate degrees in law from the University of London, and in philosophy, politics and economics from the University of Oxford.

Mr. Puta-Chekwe was a partner in the firm Lloyd, Jones and Collins in Zambia from 1980 to 1986, and litigated a number of human rights cases, some of which became landmark decisions.

From 1986 until 1989, he was vice president of Meridien International Bank in London, England. He then worked as an international development consultant, mostly with the Canadian International Development Agency in Ottawa from 1989 until 1994.

In 1994, he served as adjudication officer and United Nations observer support officer monitoring the South African election, and in 1996 served as election supervisor in Bosnia and Herzegovina.

He spent six years with the Ontario Criminal Injuries Compensation Board, serving as a part-time board member from 1991 until 1994, and as chair of the Board from 1994 until 1997.

He served as executive director of Oxfam Canada between 1997 and 1998. He also served as co-chair of the Conference of Ontario Boards and Agencies (COBA 2000).

Mr. Puta-Chekwe is a Solicitor of the Supreme Court (England and Wales), and an Advocate of the High Court for Zambia.

VICE CHAIRS

Gilles Guénette

Gilles Guénette graduated from the University of Ottawa, Faculty of Law where he later lectured in civil procedure. He worked as a general practitioner for more than 30 years and also acted as ad hoc hearing counsel for the RCMP Public Complaints Commission. Mr. Guénette has recently practiced as an arbitrator and mediator, and lectured in alternative dispute resolution at the Law Society of Upper Canada Bar Admission Course. Mr. Guénette was, until his appointment to the Tribunal, a member of the Advisory Committee of the Neighbourhood Coalition for Conflict Resolution, and the vice chair of Ottawa-Carleton Housing Authority. He is a former president of L'Association des juristes d'expression française de l'Ontario.

Connie Holmes

Connie Holmes has a long history with the Ministry of the Attorney General. She has served as registrar of the Divisional Court, Southwest Region; hearings officer for Small Claims Court pre-trials; registrar for Landlord and Tenant Hearings, and counter services manager in London; court services manager in Stratford and Goderich; assistant to the regional senior judge for the Southwest Region, and special advisor to the assistant deputy attorney general. Ms. Holmes has been active in community service organizations such as Mission Services in London. She is a founding member of Teen Girls' Home, and the Brain Tumour Foundation of Canada (Gus Macher Tournament), and sits on the Advisory Committee of Collections for the London Historical Museums.

Mary Lee

Before coming to the Tribunal, Mary Lee served for three years as registrar and chief administration officer of the Criminal Injuries Compensation Board leading the Board through a complete reorganization of its administrative processes. Prior to that, Ms. Lee was extensively involved in training and staff development with the Ontario Provincial Police for over eight years. She also served in the Premier's Office, Correspondence Unit. Ms. Lee is an active member of the Society of Ontario Adjudicators and Regulators Training and Education Committee.

Beverly Moore

Beverly Moore graduated from Sir Wilfred Laurier University with a Bachelor of Arts degree. She later graduated from the law clerk program at Fanshawe College. Ms. Moore spent 12 years working in community legal clinics. Before coming to the Tribunal, Ms. Moore served as a vice chair with the Social Assistance Review Board.

Jeffrey Rogers

Jeffrey Rogers graduated with a Bachelor of Arts degree in English from the University of Toronto and with a Bachelor of Laws from the University of Windsor. After his call to the Bar he entered practice as a sole practitioner and practised extensively in the areas of civil litigation and real estate. In 1992, Mr. Rogers was appointed a deputy judge of the Toronto Small Claims Court and continued to adjudicate on all matters within the jurisdiction of that court until his appointment to the Tribunal.

ADJUDICATORS

Ashis Basu

Ashis Basu attended schools in England and India prior to obtaining his Bachelor of Science (Honours) in 1974 and Master of Business Administration (Distinction) in 1977 from Pune University in India. He started his career in the private sector in 1977 with one of the largest corporations in Kenya, becoming General Manager in 1983. He was also a Member of the Federation of Kenya Employers and was actively involved in negotiating and mediating many employment issues. In 1980, he served in Uganda as Member of the Project Team working with the World Bank and G7 countries responsible for economic and industrial reconstruction of the country after the restoration of democracy. Moving to Canada in 1988, he joined Citigroup, one of the world's largest financial services companies. He worked in various functions during his tenure, including administration, internal control, regulatory affairs, and business and systems planning. Prior to his appointment to the Tribunal he managed all acquisitions and contracts of the organisation in Canada.

Elizabeth Beckett

Elizabeth Beckett, a graduate of Osgoode Hall Law School, has spent much of her professional life in the teaching profession. Prior to taking up her position at the Ontario Rental Housing Tribunal she was a part-time professor of law at Sheridan College and for the past ten years has taught Business Law for Canadian General Accountants. Ms. Beckett brings to the Tribunal her experience gained as an adjudicator to the Boards of Inquiry for the Human Rights Commission.

Jim Brown

Jim Brown graduated from Ryerson Polytechnical Institute in business administration in 1965. He then graduated with a Bachelor of Arts degree from York University in 1968. That same year, he graduated from the Certified General Accountant program. In 1971 he graduated from the Master of Business Administration program at York University. In 1971 he also graduated as a registered industrial accountant. Mr. Brown spent many years at the Toronto Telegram and was one of the founders of the Toronto Sun. Mr. Brown operated his own manufacturing company for 25 years before entering public service. He has lectured at Ryerson, Seneca College and the University of Toronto. He is also a former member of the Ontario Legislature.

Elizabeth Brown

Elizabeth Brown is an Honours graduate of Humber College in Business Administration. Ms. Brown was a small business owner for a number of years before being elected first to City of Etobicoke Council in 1991 where she served 2 terms, and then to City of Toronto Council in 1998. Ms. Brown has served the community in many volunteer capacities for over 30 years, including library advocacy where she was a Trustee for 12 years, including 4 years as Chair of the Etobicoke Library Board.

Stanley Chapman (Part-Time Member)

Stanley Chapman was educated in Scotland and has experience with municipal and provincial governments in a number of capacities. Prior to joining the Ontario Rental Housing Tribunal, Mr. Chapman served for seven years as an adjudicator with the Worker's Compensation Appeals Tribunal.

Robert Côté

Robert Côté is a graduate of the University of Montreal (B.Sc.A. Chemical Engineering, 1962) and the Osgoode Hall Law School (LL.B. 1990). He has worked in the chemical, petrochemical and energy fields for over twenty five years. He was called to the Ontario Bar in 1992 and has been in private practice in the Ottawa area working primarily in the Immigration and Labour law fields.

Andreas von Cramon

Andreas von Cramon is a graduate of Osgoode Hall Law School. He practiced law in Brockville, after his call to the Law Society of Upper Canada in 1991, until his appointment to the Ontario Rental Housing Tribunal. He is a past member of the Ontario Consent and Capacity Board.

Michael van Dusen (Part-Time Member)

Michael van Dusen is a graduate of the University of Ottawa (B. A. *cum laude*, 1982), LL.B. 1986). He practiced with the firm of Goldberg, Shinder, Gardner & Kronick until 1997 when he joined Messrs. Burke-Robertson. He continues to carry on an active practice with particular emphasis on insurance and commercial litigation. Mr. Van Dusen is directly involved in several local charities and continues to devote much of his spare time to community fundraising. He was appointed as a part-time member of the Ontario Rental Housing Tribunal on February 01, 2001, assigned to the Eastern Regional Office.

Susan Ellacott (Part-Time Member)

Susan Ellacott is a resident of the Ottawa region and served in the federal departments of International Trade, Consumer and Corporate Affairs, Natural Resources, and the Prime Minister's Office. In addition, she completed the Executive Leadership Course at the Canadian Centre for Management Development, received the Canada 125 Award for contributing to the community, and the federal public service Distinctive Service Award in recognition of support to the science and technology community. Ms. Ellacott graduated from Brookfield High School and received her diploma in Business Administration from Algonquin College.

Nancy Fahlgren

Nancy Fahlgren comes to the Tribunal with over 10 years experience in administering rental housing legislation. Professional highlights include: serving as acting chief rent officer under Rent Control Programs, adjudicating issues governed by the previous housing legislation, and mediating landlord and tenant rental matters. Ms. Fahlgren studied science and languages at Nipissing University and the University of Toronto.

Richard A. Feldman

Richard Feldman holds Bachelor of Arts, Bachelor of Laws and Bachelor of Education degrees. He is the recipient of many academic honours, including the Arnold Balins Award from the University of Toronto. He received this award for his high academic standing, his demonstrated concern for others, his perseverance, and for his leadership qualities. As a lawyer, he has acted on behalf of landlords and tenants in residential and commercial tenancy disputes and rent review applications. He has experience in administrative law, civil litigation and residential real estate transactions.

Harry Fine

Harry Fine graduated from the University of Toronto (B.A. Hons.) in 1977. Following graduation, he entered his family's business full time, building the organization into one of the largest family entertainment companies in Ontario, and one of the most successful bowling companies in North America. As President of Bowlerama, Mr. Fine was active in raising money for many local and provincial charities including Big Brothers, the Valley Club of Ontario and Kids Help Phone. He was elected legislative, constitutional and business development chair for his industry's trade association over his 16 years of service. Mr. Fine was appointed to the Ontario Rental Housing Tribunal in 2001. Mr. Fine is also a member of both the Society of Ontario Adjudicators and Regulators, as well as the Council of Canadian Administrative Tribunals. In August of 2002, Mr. Fine was appointed to the Toronto committee of the Federal Judicial Appointments Advisory Committee by the Minister of Justice, the Honourable Martin Cauchon. In his spare time, he is an active volunteer with the Ontario Disabled Sailors Association.

Charles Gascoyne

Charles Gascoyne graduated from the University of Windsor with a Bachelor of Arts degree in 1983 and a Bachelor of Laws degree in 1986. Mr. Gascoyne is a member of the board of directors of the Essex Law Association and a number of other local community groups.

John Goodchild

John Goodchild graduated from Queen's University in 1977 with a Bachelor of Laws degree and was called to the Ontario bar in 1979. He was engaged in private practice in both Ottawa and Kingston until 1993, then employed by the Information and Privacy Commissioner of Ontario from 1993 to 1996. He was also engaged in private practice in the United States for two years and employed by the Information Commissioner of Canada before his appointment to the Ontario Rental Housing Tribunal.

Murray Wm. Graham

Murray Graham graduated from York University in 1970 with a Bachelor of Arts degree and from Osgoode Hall Law School in 1973 with a Bachelor of Laws degree. After his call to the Bar in 1975, he practiced law in the City of Toronto until 1989. From 1990 to 1998, Mr. Graham was a legal and administrative consultant to corporations in the transportation, waste management, and environmental research and development industries.

David J. Gregory

David Gregory graduated from the University of Toronto, where he received a Bachelor of Applied Science degree in 1969 and a Juris Doctor degree in 1972. Mr. Gregory carried on a general law practice from 1974 until his appointment as a member of the Ontario Rental Housing Tribunal in 1998. Mr. Gregory has served as a deputy judge of the Small Claims Court, has actively volunteered his time on his community's Committee of Adjustment, Regional Chamber of Commerce and Economic Development Board, and is a past president of his local law association.

Knox Henry (Part-Time Member)

Knox Henry was appointed as a part-time member to the Pesticides Appeal Board in 1975, which was merged with the Environmental Appeal Board in 1978. He was a part-time member until 1991 when he became full-time vice chair of the Environmental Appeal Board. Mr. Henry is one of Canada's leading horticulturalists. He has been a guest lecturer on propagation, management and environmental issues at various universities and colleges. Mr. Henry was cross-appointed as deputy mining and lands commissioner for the period 1995 to 1997 and cross-appointed as a member of the Ontario Rental Housing Tribunal in 1999.

Linda Joss

Linda Joss commenced her career in the pioneer days of child care work, graduating from Thistletown Hospital in 1961. Mrs. Joss spent ten years in the child care field, supervising programmes for emotionally disturbed children, and working for the Children's Aid Society. After this she joined Metro Toronto's Community Service Department as a manager of hostels. During twenty five years with Community Services, Mrs. Joss managed and developed programs in Metro's four major hostels, including the opening of two new large facilities. During this time Mrs. Joss was a long term member and chair of the Centennial College Social Service Worker Advisory Board and an Advisory Board member participating in the creation of a new management course for social service staff at George Brown College. Mrs. Joss' experience in emergency housing has offered her a depth of knowledge of housing issues and the impact of evictions.

Catherine Keleher

Catherine Keleher started with the Tribunal as a part-time Member in July 2000, and became a full-time Member in February 2001. Catherine served for 13 years as Reeve of the Town of Palmerston. In that position, she served as a member of Wellington County Council and was elected Warden for 1994. Catherine has chaired the Town's Public Works, Administration Finance and Recreation, and Planning and Development committees as well as the County's Administration Finance and Personnel Committee, the Wellington-Guelph Joint Social Services Committee, and has co-chaired the Wellington-Guelph Waste Management Master Plan Steering Committee. She has been Vice-Chair of the Wellington County Library Board and a member of the Wellington County Police Services Board and the Wellington-Dufferin-Guelph Board of Health. Her community activities include two years as Vice-Chair of the Palmerston and District Hospital Board of Governors and ten years as a member of the Maitland Valley Conservation Authority and the Board of Family and Children's Services of Guelph and Wellington County.

Romuald Kwolek (Part-Time Member)

Romuald Kwolek graduated in 1981 from the University of Western Ontario with a Bachelor of Laws degree. He has practiced law in the city of Sault Ste. Marie since 1983. He has carried on a general practice with Orazietti & Kwolek since 1989, specializing in criminal and family law. Romuald Kwolek is currently a deputy judge of the Small Claims Court, and continues to be actively involved in community volunteer work.

Edward Lee

Edward Lee graduated from McGill University where he received his Bachelor of Science degree, as well as degrees in both civil (BCL) and common law (LLB), and has practised law in both Quebec and Ontario. He has also previously adjudicated with the Adjudication Directorate of Canada Immigration.

Sonia Light

Sonia Light graduated with distinction from McGill University in 1980 where she received her Bachelor of Arts degree in geography (urban systems). She graduated from Osgoode Hall Law School in 1983 and was called to the Ontario Bar in 1985. In 1986 and 1987 she was a solicitor in the City Solicitor's office for the City of Hamilton. In 1988 she acted as legal counsel to the then Ministry of Housing's Buildings Branch. From 1989 to 1998 she was employed by the former City of North York and the new City of Toronto as a solicitor.

Paul Lummiss

Paul Lummiss studied structural engineering at Lakehead University and graduated as a certified engineering technologist. He has in-depth experience with heavy, commercial and residential construction. Mr. Lummiss is a former member of local government and is a member of the Society of Ontario Adjudicators and Regulators.

Ian MacInnis

Ian MacInnis graduated with a Bachelor of Arts degree from the University of Waterloo. He has served with the Manitoba Police Commission, the Alberta Correctional Service, the Ontario Board of Parole, and as a councillor and deputy mayor for the City of Kingston. Prior to joining the Tribunal, Mr. MacInnis was in private practice as a court agent, representing clients in Small Claims Court and out-of-court settlements. He has also been active on several community boards and committees, including the City Revenue Committee, Kingston Access Bus, Kingston Planning and Development Committee, Community Economic Advisory Committee, and the Rwandan Orphans' Relief Fundraising Committee.

Donald MacVicar

Donald MacVicar graduated from Acadia University in Wolfville, Nova Scotia with a Bachelor of Business Administration degree. He continued his education at Dalhousie University in Halifax, Nova Scotia, where he obtained his Bachelor of Laws and Master of Business Administration degrees. He was called to the bar in Nova Scotia and Ontario. From 1988 to 1998, Mr. MacVicar was in private practice in the Toronto area. Since June of 1998, he has been a full-time member of the Tribunal, in Toronto.

Steven McCutcheon

Steve McCutcheon graduated from Queen's University in 1979 with a Bachelor of Arts degree, and the University of Windsor in 1985 with a Bachelor of Laws degree. He was called to the bar of Ontario in 1987. He has practiced law with Gardiner, Roberts in Toronto and later with smaller firms in Milton, Ontario. In between, he operated his own business importing parts for British sports cars and also found time to serve with the Peel Regional Police for a short period of time.

Donna McGavin

Donna McGavin was a member of the Rent Review Hearings Board from 1987 until 1994. She became a vice chair of the Social Assistance Review Board (SARB) in 1995 and remained at SARB until 1998. In June 1999, Ms. McGavin was appointed as a member of the Ontario Rental Housing Tribunal.

Dennis C. McKaig

Dennis McKaig is a graduate of Humber College in Toronto, (Funeral Service Education, 1980), and The University of Western Ontario (Bachelor of Science, 1988). Mr. McKaig worked in funeral service in Southwestern Ontario during most of the 1980's. He has been with the Ministry of Health (Emergency Health Services) in the communications field since 1989, and has also worked on a part-time basis as a paramedic.

Alan Mervin

Alan Mervin attended York University, obtaining a Bachelor of Arts Degree in Sociology in 1971, and received a Bachelor of Laws (LL.B.) From the University of Windsor in 1974. Mr. Mervin joined the Ontario Legal Aid Plan, now Legal Aid Ontario, where he served as a staff lawyer in a number of capacities. Mr. Mervin left Legal Aid in 1980, to enter the private practice of law with a focus on Criminal Trial Practice. He has been involved for a number of years in community volunteer work where he has undertaken a number of projects.

Nicholas Pustina

Nicholas John Pustina, was called to the Bar in 1957 and appointed Queen's Counsel in 1971. His practice was largely in the field of real property, estates, municipal and administrative law and, in the past five years, he has restricted his field substantially to real property. He has also been heavily involved in charitable and volunteer work in Thunder Bay. He has recently been appointed a Deputy Small Claims Court Judge and has found the work to be most rewarding.

Brian L. Rodenhurst

Brian Rodenhurst graduated from the University of Guelph with an Honours Bachelor of Arts degree and from the University of Windsor with a Bachelor of Laws. He was in private law practice for 20 years. Mr. Rodenhurst is the former mayor of the Town of Ingersoll, and chair of Ingersoll Police Services. He is a former member of the County Council, County of Oxford, and vice chair of administration and finance.

Nancy Savage

Nancy Savage attended the University of Western Ontario Law School, obtaining a Bachelor of Laws degree in 1975. She has experience in private practice and in the representation of a child protection agency as in-house counsel.

Guy Savioe

Guy Savoie has held numerous Senior Management positions within both the Financial and Business sectors for the past 17 years. Since 1990 Guy has also been a Professor at Seneca College teaching a diverse business subject portfolio within the undergraduate and post diploma business and marketing programs.

Sheryl Ruth Senis

Sherry Senis has 12 years experience managing all aspects of a diversified business portfolio. As a former owner/broker of a real estate firm, she managed human resources, liability management, company structuring and business planning. As well as receiving her certificates in business administration, mortgage financing, property law and appraisal, she obtained her designation as a market value appraiser (MVA) in 1995. Recently, as a municipal councillor, Ms. Senis served as chair and/or member of several committees; director of the Social Development Council; vice chair of the Pickering Hydro Liaison Committee; and member of the Personnel and Performance Appraisal Committee, to name a few. Since the Tribunal's inception, Ms. Senis has been appointed team lead for the adjudicators dealing with operational review recommendations, and is a member of the Performance Management Committee and the Caseload Order Group Committee.

Catherine Skinner (Part-Time Member)

Catherine Skinner is a graduate of the University of Toronto, Faculty of Law and the University of Winnipeg, where she received a Bachelor of Arts Honours degree in French and classics. She is a member of the Law Society of British Columbia and the Law Society of Upper Canada. Prior to joining the Ontario Rental Housing Tribunal, she was legal counsel to the Ontario Assessment Review Board.

Peter Spadzinski (Part-Time Member)

Peter Spadzinski was an educator for over thirty years, serving as teacher, consultant and administrator in both elementary and secondary panels. A graduate of Laurentian University and the University of Waterloo (history, politics, French), Peter has been on municipal council for fifteen years, twelve of which he served as Reeve. During that time he was also member of the Parry Sound and Area Planning Board, serving as chair for three years. He has been involved in a variety of community organizations as a volunteer.

Cynthia Lynn Summers

Cynthia Summers graduated from McMaster University in 1988 with a Bachelor of Arts degree in political science, and in 1995 she received her Master's degree in social welfare policy. Cynthia has extensive experience in the social service field and in working with a diverse clientele. She has worked with social assistance recipients, and with mentally and physically challenged children and adults. Her experience includes representing the Ministry of Community and Social Services as a case presenting officer before the Social Assistance Review Board. Most recently, she was a professor in the School of Community Services at Sheridan College.

Julius Suraski (Part-Time Member)

Julius Suraski is a practicing insurance broker with an extensive background in accounting, claims management and dispute resolution. Mr. Suraski is a graduate of the University of Toronto (Bachelor of Commerce degree in 1972), the Canadian Institute of Chartered Accountants in 1974, and York University in 1998, holding a Certificate in Dispute Resolution. He is a member of the Arbitration and Mediation Institute of Ontario. Mr. Suraski is a co-founder of the Collision Industry Standards Council of Ontario and an industry spokesperson, promoting consumer protection through the implementation of safe repair standards and ethical business practices. He has published several works including *Audit Programs for Colleges and Universities* (1984) and *The Decline of the Auto Repair Industry in Ontario* (1997). He is a frequent contributor to various insurance trade publications. Mr. Suraski is committed to community service and has contributed in excess of 4,000 hours of volunteer service at the Baycrest Centre for Geriatric Care in Toronto.

George Taylor (Part-Time Member)

George Taylor is a graduate of McMaster University and Osgoode Hall Law School. He has carried on a general law practice in Barrie since 1968. Mr. Taylor has served as a Deputy Judge of the Small Claims Court, and was a member of the Legislature of Ontario from 1977 to 1985. He is also qualified as an arbitrator and mediator. In addition, Mr. Taylor has been involved for many years in community service work and numerous professional organizations.

Diane L. Tinker

Diane Tinker is a graduate of McMaster University with a Bachelor of Arts degree and Queen's University at Kingston with a Bachelor of Laws degree. After her call to the bar in 1981, she was in private practice for two years and then became in-house counsel for 14 years. Ms. Tinker has been a deputy judge in Small Claims Court in both Kitchener and Cambridge for the past six years.

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